

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ALLEY THEATRE

Plaintiff,

VS.

HANOVER INSURANCE CO.

Defendant.

CIVIL ACTION NO. _____

[JURY DEMANDED]

DEFENDANT, HANOVER INSURANCE CO.’S NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Defendant, THE HANOVER INSURANCE COMPANY (herein “Defendant” or “Hanover”), and files this, its Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 as follows:

I. PROCEDURAL HISTORY

1. On May 3, 2019, Plaintiff, Alley Theatre (“Plaintiff”) filed its Original Petition and initiated an action against Defendant, Hanover, in the 61st Judicial District Court of Harris County, Texas, in Cause No. 2019-31244 (the “State Court Action”). *See* Exhibit “A” attached.
2. Hanover waived service of process and accepted service on May 20, 2019. *See* Exhibit “B”. However, Hanover was also served with a copy of the Citation and Plaintiff’s Original Petition by service on the Texas Secretary of State on May 9, 2019. *See* Exhibit “C.”
3. Hanover filed an answer in the State Court Action on May 31, 2019. *See* Exhibit “D” attached hereto and incorporated herein by reference.
4. Defendant’s Notice of Removal was filed on June 3, 2019, which is within the thirty-day statutory time period for removal under 28 U.S.C. § 1446(b).

II. FACTUAL BACKGROUND

5. Hanover provided a commercial lines insurance policy to Plaintiff under Policy No. RHD 7599912-13, effective August 31, 2016 to August 31, 2017 (the “Policy”).

6. This suit arises out of a claim for property damage caused by weather events on or about August 27, 2017.

7. Defendant does not admit the underlying facts alleged by Plaintiff and expressly denies liability to Plaintiff.

III. DIVERSITY JURISDICTION

8. Plaintiff is a non-profit corporation formed under the laws of the State of Texas and having its principal place of business in Harris County, Texas.

9. Defendant, Hanover, is a Delaware corporation, duly authorized and existing under the laws of the State of Delaware, with its principal place of business in the Commonwealth of Massachusetts.

10. Removal is proper because there is complete diversity between the parties.

11. Venue is proper in the Southern District of Texas, Houston Division, because the events made the subject of the suit is located within the Houston Division.

12. The “matter in controversy” under 28 U.S.C. § 1332(a) is determined by reference to the plaintiff’s pleadings. The damages the Plaintiff claims in its petition, if claimed in good faith, are controlling. *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288 (1938). Plaintiff has pled in its Petition at Paragraph No. 15 that it believes it is entitled to \$5 million in lost business income and expenses and an additional \$7 million in property damage to the structure, for which Defendant has denied there is coverage. Thus, the total economic damages and attorneys’ fees being sought exceeds the \$75,000 jurisdictional minimum amount in controversy.

IV. INFORMATION FOR THE CLERK

13. Plaintiff: Alley Theatre
14. Defendant: The Hanover Insurance Company
15. The case is pending in the 61st Judicial District Court of Harris County:
Honorable Judge Fredericka Phillips
Harris County Courthouse
201 Caroline, 9th Floor
Houston, TX 77002
Phone: (713) 927-2625
16. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81, Defendant has attached copies of all processes and pleadings served upon it in the state court action. No further proceedings have been had therein. Pursuant to Local Rule 81, a copy of the trial court's docket sheet is attached as Exhibit "E" and an Index of Matters Being Filed is attached.
17. There are no other pleadings in state court.
18. Counsel for Plaintiff:
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19. Counsel for Defendant, Hanover:
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Jury Demand

20. Plaintiff demanded a jury trial in state court.

21. Defendant demanded a jury trial in state court and requests a trial by jury in federal court as well.

Miscellaneous

22. On the same day this Notice of Removal was filed, Defendant filed notice of this removal in the State Court Action. A copy of this Notice of Removal filed in the State Court Action is attached as Exhibit "F."

23. Because Plaintiff is a non-profit corporation doing business in Texas; Defendant is a business organized under laws of Delaware and having its principal place of business in Massachusetts; and the amount in controversy exceeds \$75,000, the Court has subject matter jurisdiction based on diversity of citizenship and residency. 28 U.S.C. § 1332. As such, this removal action is proper.

WHEREFORE, Defendant, The Hanover Insurance Company, respectfully requests that the above-entitled action be removed from the 61st District Court of Harris County, Texas, to the United States District Court for the Southern District of Texas, Houston Division.

Respectfully submitted,

By: /s/ Peri H. Alkas
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served upon all known counsel of record pursuant to the Federal Rules of Civil Procedure on June 3, 2019.

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William R. H. Merrill
Jonathan J. Ross
Chanler A. Langham
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VIA ECF NOTIFICATION:

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